

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF PUERTO RICO
3
4 In Re:) Docket No. 3:17-BK-3283(LTS)
5)
6) PROMESA Title III
7 The Financial Oversight and)
8 Management Board for)
9 Puerto Rico,) (Jointly Administered)
10 as representative of)
11)
12 The Commonwealth of)
13 Puerto Rico, et al.,) January 17, 2019
14 Debtors.) [CORRECTIONS BY
15) PETER HEIN]
16
17 In Re:) Docket No. 3:17-BK-3284(LTS)
18)
19) PROMESA Title III
20 The Financial Oversight and)
21 Management Board for)
22 Puerto Rico,)
23 as representative of)
24)
25 Puerto Rico Sales Tax)
Financing Corporation,)
(COFINA))
Debtor.)

26 The Bank of New York) Docket No. 3:17-AP-133(LTS)
27 Mellon,)
28) in 17-BK-3284(LTS)
29 Plaintiff,)
30 v.)
31)
32 Puerto Rico Sales Tax)
33 Financing Corporation,)
34 (COFINA), et al.,)
35 Defendants.)

1 the time allocation issue. I see that Mr. Hein is at the
2 podium now in New York.

3 Mr. Hein.

4 MR. HEIN: Yes. Thank you, Your Honor.

5 I had requested an opportunity to respond to the
6 legal arguments that Plan proponents presented in their briefs
7 of January 9. I did that in a filing with Your Honor. Your
8 Honor denied my request to respond in writing but said I could
9 present argument.

10 And I would like to address the legal issues, which, . . . ,
11 the proponent's position on the legal issues I raised in my
12 objections was first presented on January 9th. I have not had
13 an opportunity to respond in writing to that. It will take me
14 30 minutes to do that.

15 Respectfully, even with the other objectors, I think
16 we're talking about a total time, for the people that have
17 filed objections, significantly less than the amount that's
18 been allocated for public participants who have not submitted
19 formal objections.

20 It's billions of dollars at stake here. And
21 respectfully, we're, I believe, running ahead of the schedule.
22 And respectfully, I request the opportunity to argue the legal
23 points that we have not yet had an opportunity to respond to.

24 The COURT: So what I had ruled was that your group
25 could have 45 minutes all together. And so I'm assuming now

1 that the other members of your group do not believe that in
2 the remaining 15 minutes of that 45, they can make the
3 arguments that they need to make, summing the arguments
4 already submitted in the papers?

5 MR. EISENBERG: That would be correct, Your Honor. I
6 would need about 20 minutes to handle mine, and I think
7 Mr. Elliott would need about ten to handle his.

8 Should I repeat that with the microphone?

9 THE COURT: Yes, please.

10 That's Mr. Eisenberg speaking.

11 MR. EISENBERG: Your Honor, as I indicated, I think
12 that on behalf of GMS, I would need about 20 minutes, and I
13 think Mr. Elliott would need about ten for his arguments.

14 MR. ELLIOTT: Yes, Your Honor. I had requested 15
15 minutes. I'd like to try to accommodate the Court's wishes
16 and cut mine down as much as possible, but ten to 15 minutes I
17 think is reasonable, Your Honor.

18 THE COURT: All right. I will provide a total of an
19 hour, so that's 30 plus -- 30 for Mr. Hein and 30 to be
20 divided between Mr. Eisenberg and Mr. Elliott.

21 MR. HEIN: Your Honor, I think Mr. Dvores who is here
22 as well had wanted to speak as well. He filed an objection.
23 Thank you.

24 THE COURT: And so what is Mr. -- oh, thank you. So
25 Mr. Dvores is coming to the podium.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Elliott.

3 And now I will turn to Mr. Hein in New York.

4 MR. HEIN: Yes. Thank you very much, Your Honor.

5 I intend to focus my remarks on the legal and
6 constitutional reasons the Plan cannot be confirmed, and in
7 particular, respond to the conclusions of law and the
8 arguments in the paper^s_A that Plan proponents filed on or after
9 January 9, to which we have not yet been able to respond.

10 An overarching point, Your Honor, is the proposed new
11 bonds are to be secured by what in substance is the same
12 statutory lien as the current COFINA bonds. The Oversight
13 Board describes the new bonds as secured by a statutory lien
14 in the COFINA Fiscal Plan. That is exactly how the Oversight
15 Board, in a 2017 brief to the First Circuit, described the
16 current COFINA bonds.

17 The Oversight Board told the First Circuit that the
18 current bonds are, quote, secured by a statutory lien,
19 unquote. That's my declaration, Exhibit K, record 4606-7, at
20 pages 78 to ⁷9.

21 The new bond legislation describes the pledged taxes
22 as present and future revenues and collections generated by
23 the applicable share of the sales tax. The official statement
24 for the current bonds uses essentially the same language to
25 describe the security for the current bonds under Act 91.

1 Namely, all present and future collections of the pledged
2 sales tax are transferred to and made the property of COFINA.

3 And both the new bond legislation and Act 91, the
4 current legislation, are express that COFINA revenues do not
5 constitute available resources or revenues of the
6 Commonwealth.

7 The Plan proponents do not want Your Honor to rule on
8 the legality of the current COFINA lien and bonds, but as Your
9 Honor noted at the outset this morning, they do want Your
10 Honor to issue some very, very specific legal ^{rulings} ~~rules~~ and
11 factual findings on the materially same, new COFINA lien and
12 bonds.

13 The extensive proposed findings and conclusions of
14 law and Proposed Order, I think it's over 120 pages of
15 materials, that has just been submitted by Plan proponents the
16 last couple of days, ask Your Honor to, quote, specifically
17 determine, closed quote, that the new lien against the pledged
18 taxes is valid.

19 They ask Your Honor to specifically determine that
20 the COFINA revenue shall not constitute available resources or
21 available revenues of the Commonwealth, and ask Your Honor to
22 judicially determine that all new COFINA bonds be stamped with
23 a determined the legend, to be confirmed by the Order of the Court.

24 But since the new liens and new bonds are the
25 substantially the same as -- materially current new liens

23 Let me turn now to the constitutional doctrines that
24 preclude the discrimination that the Plan provides. My
25 objection and supplement detailed the constitutional doctrines

1 that preclude approval of a plan that discriminates based on
2 place of residence against United States citizens in the 50
3 states and in favor of residents of Puerto Rico.

4 The discrimination is evident on the face of the
5 Plan. Puerto Rican residents, simply because they're Puerto
6 Rican residents, get the right to elect a larger distribution.
7 And if you look at the disclosure statement, compare tables
8 2-A and 2-B, that's at docket 4364, at 21 to 23, you'll see
9 that Puerto Rico residents can elect a two percent cash
10 payment not available to anyone in the 50 states.

11 Puerto Rico residents can elect one tranche of
12 interest bearing bonds ^{that} mature in 22 years, 20⁴⁰, as compared
13 to the 11 splintered fragments going out 40 years to 2058 that
14 citizens in the 50 states get. Plan proponents argue, well,
15 this discrimination is justified, but I submit that
16 discrimination against United States citizens because they do
17 not reside in Puerto Rico violates the Constitution
18 irrespective of any asserted justification.

19 48 USC 737 is express that the same rights that
20 United States citizens have in the 50 states also apply in
21 Puerto Rico. And there's no justification exception in the
22 statute for discrimination. Moreover, it's not justified to
23 discriminate here.

24 Many of the COFINA bonds were originally sold to
25 residents of the 50 states as federally tax exempt, but other

1 bonds were sold to Puerto Rico residents as federally taxable.
2 Originally sold as federally taxable, because the residents of
3 Puerto Rico are not taxed federally, just in Puerto Rico.

4 Other bonds were sold to Puerto Rican government
5 entities and were not sold on the basis of being tax exempt.
6 A Puerto Rican resident or entity who bought bonds without a
7 federal tax exemption has no right to exempt -- a federally
8 tax exempt bond. They get exemptions ^{from} of Puerto Rico Income
9 Tax just ^{as they had} at the time they bought the original bonds.

10 That's what they should get. But here they're
11 getting an additional benefit. The added benefit going to
12 residents of Puerto Rico alone includes cash, cash that could
13 otherwise be distributed prorata among bondholders. And they
14 also, as I mentioned, get significantly better bond coup --
15 the coupon paying bond, in one tranche maturing in 20, ⁴⁰, not
16 11 splintered fragments.

17 In a major institution -- ^Y you could have the biggest
18 institution based in Puerto Rico. They could have bought at
19 eight to ten cents on the dollar, as some did, according to
20 the records I submitted as Exhibits B and C to my Declaration.
21 They will now get the benefit of the separate cash and the
22 better bonds on top of their huge profit, because they bought
23 at eight to ten cents on the dollar.

24 Contrast a retired bondholder in the 50 states who
25 invested, as I did, at par, at the original offering price, to

1 have a stream of retirement income. We don't get those
2 special benefits.

3 The professed concern that the Plan proponents -- I'm
4 sorry. The Plan proponents have said there's a limited number
5 of ~~TAX EXEMPT~~ bonds, but that underscores another problem here. Plan
6 proponents want to proceed without knowing what the IRS
7 position is.

8 The IRS has something to say. They wanted to say it.
9 Because of the government shutdown, we have not heard what
10 their position is. Respectfully, I believe Your Honor must
11 withhold the ruling until we know the IRS position.

12 ~~ON THIS~~ ~~According to the record, the taxpayers' exemption may~~
13 ~~GET TAXED ON~~ ~~be imputed going out to 2058 if any of those are taxable.~~ ~~BONDS~~
14 ~~INCOME ON ZERO COUPON BONDS~~
15 Under 11 U.S.C. 1125(a), bondholders are entitled to a clear
16 disclosure of tax consequences. They were required to vote
17 when there's been no disclosure of the IRS position.

18 Let me now turn to the Contracts Clause. There can
19 be no dispute that the new bond legislation is a law. And by
20 its terms, that law, to quote the legislature of Puerto Rico's
21 "OF MOTIVES" statement, ~~no difficulties, quote~~, will serve to release the
22 lien that holders of COFINA bonds currently have and thus,
23 impair the obligation of the contract.

24 Plan proponents argue, well, the law does not take
25 effect unless and until the Court confirms a plan. Plan
proponents argue that sidesteps the constitutional problem,

1 but respectfully, it does not.

2 First, this Court must follow the U.S. Constitution.
3 This Court cannot sanction ~~an abrasive~~ ^{AND EMBRACE A} plan, premised on
4 Puerto Rico legislature^{ion}, that is a violation of the Contracts
5 Clause.

6 Second, under Section 2174(b)(3) of PROMESA, a
7 requirement of plan confirmation is that the debtor is not
8 prohibited by law from taking any action necessary to carry
9 out the plan. The U.S. Constitution Contracts Clause is such
10 a legal prohibition. So under PROMESA, the Court cannot
11 confirm the Plan.

12 Third, there is no Congressional authorization
13 exception to the Contracts Clause. Even if Congress and
14 PROMESA did purport to authorize Puerto Rico to impair
15 existing contracts, that Congressional legislation would not
16 be effective.

17 The Supreme Court in the Saenz case -- it's 526 U.S.
18 489, at 508, I cite it in my Supplement -- specifically ruled
19 that Congress' legislative powers may not be exercised in a
20 way that violates other specific provisions of the
21 Constitution.

22 Fourth, there is no judicial approval exception to
23 the Commerce Clause. If there is a law that impairs the
24 ~~violation~~ ^{OBLIGATION} of contracts, a Court blessing or adopting that
25 legislative impairment does not obviate the constitutional

1 violation.

2 Congress and/or PROMESA did not in any ^{EVENT} ~~effect~~
3 authorize retroactive impairment by the Puerto Rico
4 legislature, and the Plan proponents here ignore the sections
5 of PROMESA cited in my objection at Docket 4545, at page ^{IS AND NOTE 8} 18,
6 Section 4121(d), ^{b (1)(N)} read together with 2174(b)(7), 2194(k),
7 2194(m)(5)(B), which echoes 2174(b)(6), and 2195(a).

8 I submit, ^{o v v o} Plan proponents argue it is not Puerto
9 Rico's legislation clause that impairs the contract. They
10 say, well, there's a settlement that impairs the contract.
11 But there's no settlement exception to the Contracts Clause,
12 much less ^{A SETTLEMENT OBJECTED TO BY PEOPLE} parties who are not parties to the settlement and
13 whose contracts will be impaired.

14 Eight, Plan proponents say the United States Trust
15 opinion recognizes that a state, or here, Puerto Rico, could
16 impair contracts, quote, if it is reasonable and necessary to
17 serve an important government purpose. But the pledged sales
18 tax revenue for the current COFINA bonds is roughly two times
19 annual debt service. COFINA can pay all bonds as long as the
20 lien is not abrogated.

21 The only evidence in this record is that if the lien
22 is not abrogated, there will be sufficient revenues. The
23 Senior COFINA's witness, Mr. Rodrigue, admitted that
24 yesterday.

25 Also, the pledged sales tax revenues do not belong to

1 the Commonwealth. Mr. Rosen yesterday admitted that the
2 pledged sales tax revenues do not currently belong to the
3 Commonwealth. That may be disputed by others, but there has
4 been no judicial Order ruling that the pledged sales tax
5 revenues belong to the Commonwealth. No Court has so Ordered.

6 In any event, the notion that the Commonwealth needs
7 more money and thus it is reasonable and necessary to take
8 pledged sales tax revenue that does not belong to the
9 Commonwealth and that no Court, no Court, has ever held belongs
10 to the Commonwealth, ~~this also leads to hold~~ ^{FAILS TO MEET THE} an
11 unreasonable and unnecessary standard, even looking at it from
12 the view of the Commonwealth desiring more money.

13 I ~~looked at~~ ^{LAI D OUT} specific facts, based on statements,
14 documents and website materials from the Puerto Rican
15 Government and Puerto Rican officials. There has been no
16 ~~official~~ ^{SPECIFIC} response to any of these facts by Plan proponents.

17 Puerto Rico represents to bondholders -- and I
18 mentioned this yesterday. This is Exhibit S -- that on a
19 proper analysis, Puerto Rico stands last in outstanding debt
20 per capita ~~in~~ ^{OF} all U.S. jurisdictions, because Puerto Rican
21 residents don't pay Federal Income Tax as a general matter,
22 and thus, do not pay income tax toward the federal debt.

23 ~~As~~ ^{AND} Puerto Rico's own current auditors concluded that
24 Puerto Rico's tax burden is less than one-third of the average
25 OECD country, Puerto Rico's own comptroller, their own

1 comptroller, shows on his website -- and you can look it up,
2 it's up there today -- that Puerto Rico has taken on literally
3 thousands of contracts for advertising, public relations and
4 consulting since July 1, 2018, alone. Thousands of contracts
5 for PR, advertising and consulting.

6 Puerto Rico does not dispute it continues to pay
7 Christmas bonuses, at least ~~4~~ 400 million in Christmas bonuses
8 since the Governor declared in 2015 that the Commonwealth
9 would not pay its debt.

10 At the current rate, Puerto Rico is going to end up
11 spending over two billion dollars, over two billion dollars,
12 just in its effort to avoid its debt. Puerto Rico, and again
13 this is not disputed, just two months ago, lowered taxes,
14 lowered taxes for people in Puerto Rico by about two billion
15 dollars.

16 Puerto Rico, according to the financial records that
17 they publish on the internet, has over 12 billion dollars in
18 cash currently. 12 billion dollars in cash. And there's no
19 dispute that over 1.8 billion in pledged sales tax revenues
20 sits in bank accounts, and that this money could be disbursed
21 to COFINA bondholders but for the distribution being held up
22 by this proceeding. But for this proceeding, the money would
23 have been disbursed, bondholders would be fully paid.

24 I believe that the United States Supreme Court, in
25 *United States Trust*, viewed the burden of showing "reasonable

1 and necessary", as falling upon the state, or here the
2 Commonwealth, that is trying to avoid or impair its own
3 obligations. And I address that in my objection, page 20,
4 note ten.

5 But regardless of where the burden lies, if Puerto
6 Rico can just brush off secure^d bondholders and justify the
7 impairment of debt obligations on this record, respectfully,
8 Illinois, New Jersey and Connecticut are not going to be far
9 behind.

10 Other factors that ~~apply~~ militate against deference
11 to Puerto Rico here include[?] the fact that here the
12 Commonwealth's self interest is at stake, To quote the United
13 States Supreme Court in the *United States Trust* case at page
14 26, The fact the Plan discriminates in favor of some parties,
15 the ones who helped negotiate it, and including some Puerto
16 Rican interests, the fact the impairment is not just ^{TEMPORARY} ~~contrary~~
17 but is substantial^{AND} permanent, the fact that the impairment
18 operates retroactively. Puerto Rico took our money. Now it
19 just wants to keep it.

20 The fact is Puerto Rico is violating its statutory
21 non-impairment covenant. Puerto Rico agreed by Statute not to
22 impair the rights of bondholders, but now has defied that
23 solemn pledge. All these factors militate against deference
24 to Puerto Rico's view here. Indeed, the force of the
25 constitutional prohibition implied in *United States Trust*

APPLIED

1 should have even greater application in this case.

2 ^{JUSTICE}
Chief Justice Burger, concurring, would have imposed on
3 a state seeking to ^{ABROGATE} ~~incorporate~~ its own contracts ^{WITH} bondholders,
4 an even more stringent standard. The Chief Justice said, the
5 state must demonstrate it is essential to an important state
6 purpose. The Chief Justice further said, ^{THE} ~~it must~~ state ^{MUST SHOW} that
7 it did not know and could not have known the impact of the
8 contract on the state at the time the contract was made.

9 And that I would argue would be the standard if the
10 Supreme Court would hear this matter. It would certainly be
11 urged to adopt and could adopt ^{THAT IT} the covenant abrogated in
12 United States Trust. ^{Yet} And the Supreme Court held there was a
13 violation of the Contracts Clause there. ~~It~~ did not directly
14 jeopardize payment of interest and principal of the
15 bondholders.

16 This was a fairly technical ^{IMPAIRMENT} point, as the dissent
17 pointed out in that case, involving whether or not the Port
18 Authority could subsidize rail passenger transportation from
19 revenues. Here the impairment is not technical. It tears up
20 the obligation to pay principal and interest. This case is
21 ^{A FORTIORI} from United States Trust.

22 A few points on the Takings Clause. Plan proponents
23 do not dispute there's been a taking here. Rather, they argue
24 that although -- a taking occurs ^{while} subordinate bondholders
25 are supposedly provided just compensation, ^{BUT} ~~but~~ there has never

1 | been a judicial ruling that invalidates the current structure
2 | and lien. And the Plan proponents admit there's currently a
3 | statutory lien in place.

4 You have that ~~pension~~ from 2013 that I referred to
5 yesterday, Exhibit S, page 63 of the Hein Declaration. You
6 have the fact that, as I mentioned, the Oversight Board itself
7 represented to the First Circuit Court of Appeals just in 2017
8 that the bonds are, quote, secured by a statutory lien against
9 pledged SUT revenue. That remains the current status. As of
10 today, the bonds are secured by a statutory lien.

11 The Oversight Board also admitted to the First
12 Circuit that the pledged sales tax revenue are not available
13 revenues or available resources under the Puerto Rican
14 Constitution. That's not just me saying this. This is the
15 Oversight Board representing to the First Circuit Court of
16 Appeals that the pledged sales tax revenues currently are not
17 available revenues or not available resources under the Puerto
18 Rico Constitution.

19 And the Puerto Rico legislature, in the new bond
20 legislation, the legislature states that the COFINA
21 bondholders, quote, currently have, close quote, a quote,
22 lien, close quote, over pledged sales tax revenues. And the
23 new bond ^{LEGISLATIVE} ~~tax revenue~~ purports to release a lien over ^{\$}17.5
24 billion of what it calls, quote, previously pledged SUT
25 revenues.

1 A very premise, as I noted, of the new liens and new
2 bonds is that Your Honor will issue a new Order that confirms
3 the new lien, judicially determines the new bonds, materially
4 the same as the current lien, and the bonds, are legally
5 binding and enforceable.

6 So how and by who has it been decided that pledged
7 sales tax revenues are supposedly only worth half of what
8 they're really worth, even though no court has invalidated the
9 structure, even though the new lien and new bonds would be
10 materially the same as the old lien and the old bonds, while
11 Plan proponents say, well, this was determined by settlement,
12 a reference to the confidential settlement process.

13 There's of course, as Your Honor knows, no public
14 record. We have no idea what occurred in that process. The
15 objecting bondholders in the 50 states were not participants.
16 We had no ability to be heard. There simply was no notice
17 saying to juniors, juniors, this is ^A confidential ^{MEDIATION} confirmation,
18 you can reply to this e-mail address and are invited to
19 participate.

20 As Mr. Elliott pointed out, many bondholders have put
21 in letters to the Court and otherwise indicated their
22 concerns, and none of them were invited to participate.

23 There's also, fundamentally, whatever the merits are
24 of the mediation, it's not a judicial ruling. There's no
25 judicial opinion. It's a voluntary, non-binding process.

1 If someone had a desire to impose the result of a
2 confidential mediation process on junior bondholders, they
3 should have notified juniors; and in short, they should have
4 ensured that juniors without conflicts were represented in
5 that process.

6 All the participants in that confidential mediation
7 process receive special benefits. The junior bondholders ^{WHO} do
8 not receive those special benefits ~~who~~ were not represented.
9 Our rights cannot be valued based on a confidential settlement
10 process in which we were not participants, and where it just
11 so happens that the people who were participants get special
12 benefits.

13 Before our property is given away, respectfully, we
14 are entitled to a judicial ruling on the validity of the
15 current COFINA structure and lien. Plan proponents themselves
16 admit there is a binary choice here. Either the COFINA lien
17 structure is valid or it's not. Simply because some people
18 have challenged the COFINA structure ^{AND} of the lien, it does not
19 mean it's ^{IN} valid.

20 Proponents admit it's a binary choice, either all
21 valid or not valid. ^{IF} Your Honor can judicially determine and
22 issue the rulings that you're being asked to do in that
23 Proposed Finding and Order, That COFINA revenues shall not
24 represent available revenues of the Commonwealth, If Your
25 Honor is willing to do that at the behest of Plan proponents,

1 respectfully, there is no basis to approve a Plan that gives
2 away almost half of the pledged revenues.

3 A few words in response to what Plan proponents also
4 argue on the Takings Clause. First, PROMESA does not
5 authorize a retroactive taking of bondholder property. And
6 again, I point to the section ^{5 LISTED} in my objection, page 15, note
7 eight.

8 Second, even if PROMESA, by its terms, authorized a
9 retroactive taking of the statutory lien, Congress by statute
10 cannot override the constitutional protections of the Takings
11 Clause. Plan proponents argue that under some 35 year old
12 bankruptcy court opinion from Colorado, COFINA bondholders
13 supposedly have no interest in future sales tax revenues, but
14 that's a legal issue the Court here needs to decide.

15 And Your Honor is being asked to judicially declare
16 and ^{JUDICIALLY} specifically determine, as part of the approval of the new
17 bonds, ^{THE} new bond legislation ~~that~~ says pledged sales taxes
18 include present and future revenues. The current lien is on
19 present and future collections.

20 If Your Honor believes what the Oversight Board
21 argues in its Reply, Your Honor cannot approve the new lien
22 and the new bonds. Your Honor cannot give the judicial stamp
23 of approval they're seeking if Your Honor believes what
24 they're arguing about, that 35 year old bankruptcy case from
25 Colorado.

1 The notion that there was just a mistake, as
2 Mr. Eisenberg has said, it ^{FAILS} just ~~false~~ by its terms. If
3 we're going to abrogate property rights based on supposed
4 mistakes of Congress that last for decades, and also mistakes
5 of Puerto Rico officials who repeatedly confirmed the validity
6 of the structure and lien, if we're going to do it based on
7 the idea of a mistake having been made, the Rule of Law will
8 have lost all of its meaning.

9 The Oversight Board argued that ^{SINCE} had Congress
10 exercised its Territories Clause power, rather than bankruptcy
11 authority, that Congress could have abrogated ^{PROPERTY RIGHTS} ~~bankruptcy~~ and
12 ^{AND CONTRACT RIGHTS} ~~under that power, --~~ ^{SO LET'S DO A THOUGHT EXPERIMENT} Could Congress pass a law that
13 expropriates all private homes or all private businesses in
14 San Juan without compensation on the theory that the
15 Territories Clause trumps the Takings Clause? I don't think
16 so.

17 The Territories Clause clearly does not trump the
18 Takings Clause or the Contracts Clause or any other specific
19 Constitutional rights, as the Supreme Court in the Saenz case,
20 526 U.S. 489, at 508, indicates, I think, quite persuasively.

21 The Oversight Board's ^{ARGUES} argument that the economic
22 impact is supposedly ^{MINIMAL} ~~amenable~~ on ^{THE} theory, it's a settlement
23 that has ^{THE IMPACT} ~~a Plan~~, But of course it's the Plan that has the
24 ^{IMPACT} ~~increment~~. The settlement without the approval of the Plan
25 has no legal force. Any claim that the distribution here to

1 junior bondholders is just compensation, ^{IGNORES} ~~also argues~~ that the
2 tax revenues, if not given away, would be sufficient to pay
3 the debt.

4 Of course the Plan proponents have the burden of
5 proof here. No evidence has been argued that the sales tax
6 ^{REVENUES} ~~offers~~ have not been sufficient. The only evidence is that
7 they are.

8 So in sum, the Plan proponents have the burden to
9 show that the requirements of confirmation are met. Even
10 apart from PROMESA, the constitutional violations are an
11 ^{OBSTACLE} ~~obligation~~ here. The United States is obliged to uphold the
12 Constitution. That's an obstacle. You don't even have to
13 look at PROMESA.

14 But PROMESA also requires, and Plan proponents have
15 the burden of proving that the Plan complies with law,
16 including the U.S. Constitution. That has not been shown by
17 Plan proponents. Section 2174(b)(3), thus, is not met.

18 Plan proponents also must prove that the settlement
19 is in the best interest of bondholders, which requires the
20 Court to consider whether, under ^{NON} bankruptcy law, junior
21 bondholders ^{WOULD} ~~receive~~ a greater recovery. And clearly they
22 would, because if you don't ^{ABROGATE} ~~advocate~~ the lien, junior bond
23 proponents get ^{100 %} ~~a percent~~. Therefore, ²¹⁷⁴ ~~7142~~(b)(6) has ^{NOT} ~~been~~ met.

24 One last thought. I know Plan proponents talk about
25 a vote. No vote can abrogate the Constitutional rights of

1 myself and others that are objecting.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Hein.

4 Mr. Dvores, you may come to the podium in New York
5 now.

6 MR. DVORES: Thank you, Your Honor.

7 Yesterday Mr. Rosen made reference to the ballot
8 counts in saying that this so-called settlement, the Plan of
9 Adjustment, had overwhelming support. Of course it had
10 overwhelming support from those who would benefit from the
11 Plan, the insurance companies, the seniors, all the members of
12 the negotiating committee who used the opportunity to have the
13 negotiations and the secret bargaining that went on, to enrich
14 themselves by trading in the bonds, all through this process
15 that lasted almost a year and a half. They're approving this.

16 They're approving a settlement which would give them
17 broad releases from any claims of causes of actions which we,
18 the junior bondholders, might have against them for their
19 unfair, illegal activities, and using this negotiation process
20 for unjust enrichment for themselves and to take advantage of
21 the unrepresented junior bondholders.

22 Then you have the people from Puerto Rico who
23 accepted this. Well, they're getting a better deal than the
24 juniors who live on the mainland, in the 50 states. All of
25 the ones that -- the members of the juniors who live in Puerto